IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/11/2004

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The Honourable Mr.Justice V.KANAGARAJ

Crl.R.C.No.1707 of 2004

D. Paramasivam ... Petitioner

-Vs-

M/s. Mahalakshmi Hardwares,
rep. By its Partner,
Jayadevan,
41, Mill Road, Coimbatore.1. ... Respondent

Revision filed under Sections 397 and 401 Cr.P.C. praying for
as stated below.

For Petitioner : Mr. S.Doraisamy
For respondent : ---

:O R D E R
The above criminal revision case has been filed praying to
call for the records relating to C.M.P. No. 7290 of 2004 in C.C.No. 427 of
2 003 dated 1.9.2004 on the file of the Judicial Magistrate V, Coimbatore.
and set aside the same allowing the revision petition.
2. The learned counsel for the petitioner would submit
that the complainant has filed a case under Section 138 of Negotiable
Instruments Act against the petitioner on the ground that the cheque issued by
the petitioner/accused for a sum of Rs.46,613.20 was dishonoured by the
bankers of the petitioner/accused. He would further submit that in the
regular course of trial the witnesses have been examined by the trial Court.
During trial, the petitioner, who is the accused, has filed a petition under
Section 91 Cr.P.C. seeking to issue summons to the respondent/complainant
directing him to produce the books of accounts pertaining to the
petitioner/accused maintained by the complainant for M/s. Mahalakshmi
Hardwares and M/s. National Hardwares before the trial Court.
3. The learned counsel appearing on behalf of the
petitioner would further come forward to say that since the Manager of the
respondent firm, who was examined as P.W.1, had admitted in his cross
examination that they have a sister concern by name M/s. National Hardwares
and the petitioner had supplied concrete mixing machines to M/s. National
Hardwares and the payment for the machines were adjusted against the accounts
of the complainant firm and therefore, it is necessary to summon the said
account books to prove the innocence of the petitioner. It is under these
circumstances, the lower Court has decided that it is the duty of the accused

to prove the defence on his own documents and he cannot ask the complainant to produce the documents which is no way relevant to the case and dismissed the petition and it is against this order passed by the trial Court, the petitioner/ accused has come forward to file the above Criminal Revision Case on such grounds as aforementioned.

4. Today, when the above Criminal Revision Case was taken up for consideration, the point for consideration is as to whether a prima facie case is made out on the part of the revision petitioner or not. This Court, having gone through the facts and circumstances of the case and upon hearing the learned counsel for the petitioner, this Court is able to assess that it is the case wherein the other side i. e. the respondent/complainant has registered a case under Section 138 of Negotiable Instruments Act against the petitioner for having issued a cheque for a sum of Rs.46,613.20 and the same having come to be dishonoured by the bank concerned, has initiated the said proceedings against the petitioner before the trial Court i.e. the Court of Judicial Magistrate No.V, Coimbatore.

5. During pendency of trial in the above case, the petitioner has filed an application under Section 91 of Cr.P.C. seeking a direction to the other side to cause production of the statement of accounts of the complainant and the learned Magistrate, stating that with the available materials the petitioner should have come forward to prove the defence and it is not reasonable in the circumstances of the case to file an application seeking to cause production of any document i. e. in the custody of the respondent/complainant and it is up to the accused to prove his own case and therefore, since the trial Court did not find any reason for filing of the above application, has ultimately dismissed the same and it is against the said order, the petitioner has come forward to file the above criminal revision case.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, this Court is able to analyse that no prima facie case is made out on the part of the petitioner for having filed an application under Section 91 Cr.P.C. before the trial Court and for reasons best assigned by the trial Court, it has dismissed the application and therefore, even the proceedings initiated against the said merited and considered order cannot sustain and it is only desirable to dismiss the above criminal revision case itself since no prima facie case is being made out and hence, the following order:

In result,

(i) the above Criminal Revision Case does not merit acceptance and on that score itself it has become liable to be dismissed and is dismissed accordingly;

(ii) the order dated 1.09.2004 made in C.M.P.No. 7290 of 2004 in C.C.No.427 of 2003 on the file of Judicial Magistrate V, Coimbatore, is confirmed;

(iii)consequently, the connected Crl.M.P.No. 10169 of 2004 is also dismissed.

Index : Yes
Internet : Yes

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To

1.The Judicial Magistrate V
Coimbatore.